IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.13 OF 2007

Union of India & Anr. ..Appellants.

V/s.

Farooq Ahmed ..Respondent.

Mr.R.V.Desai, senior counsel with A.S.Rao & Mrs.S.V. Bharucha i/b. T.C. Kaushik for appellant.

Mr.Madhu M. Patel for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2007.

P.C. :-

The department has come in appeal against the order of the learned Tribunal allowing the appeal filed by the respondent herein.

2. Two appeals were filed one by Rayees Ahmed and another by Farooq Ahmed. In so far as the appeal filed by Rayees Ahmed is concerned, the penalty imposed was reduced to Rs.20,000/- on the facts and circumstances set out therein. By an order dated 27th July, 2007 in an appeal preferred by Rayeez Ahmed being FERA Appeal No.11 of 2007, we have chosen not to interfere in the appeal referred by the revenue as we held that no question of law arise.

3. In the instant case, on behalf of the appellant, it is pointed out that the Tribunal once having come to the conclusion that the confessional statement made by the respondent could not be treated as retracted and can be accepted as true and voluntary and further that statement is corroborated by the documents produced on record, the appeal ought not to have allowed.

4. On the other hand, on behalf of the respondent, it is pointed out that in criminal proceedings was concluded and the learned Tribunal acted on that basis. The standard of proof in criminal proceedings is different from the civil case. In the instant case, the Tribunal has recorded as under:-

> " Thus, I am of the opinion that having regard to entire circumstances and the facts confessing statement of both the accused, though retracted, could be accepted being true and voluntary and further the statements are fairly corroborated by the documents produced on the record. "

5. In other words, learned Tribunal itself has held that there was evidence against the appellant

herein. We are, therefore, in agreement with the contention urged on behalf of the appellant herein that this would give rise to a question of law and in the light of the evidence, the respondent has to be held guilty of the charge and consequently liable for imposition of penalty.

6. In the light of that, order dated 23rd April, 2003 in so far as the present respondent is concerned is set aside. We allow the appeal and impose a penalty of Rs.20,000/- on the respondent, to be paid within 15 days from today.

6. Appeal disposed of accordingly with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)